

§ 902.69; and any adjustments determined necessary as a result of the independent public accountant (IPA) audit.

(2) Each PHA (or RMC) shall post a notice of its final PHAS score and designation in appropriate conspicuous and accessible locations in its offices within 2 weeks of receipt of its final PHAS score and designation. In addition, HUD will post every PHA's PHAS score and designation on HUD's Internet site.

(c) *Review of audit.* (1) *Quality control review.* HUD may undertake a quality control review of the audit work papers or as part of the Department's ongoing quality assurance process.

(2) *Determination of deficiency.* If HUD determines that the PHA's financial statements, electronic financial submission, or audit are deficient, it shall notify the PHA of such determination in writing. The PHA will have 30 days in which to respond to the notice of deficiency and to establish that the determination is erroneous. Following consideration of any PHA response, HUD will issue a final determination in writing to the PHA.

(i) *Deficient financial statements.* Deficient financial statements are statements that are not presented, in some material respect, in accordance with accounting principles generally accepted in the United States, as set forth by the Government Accounting Standards Board, or if applicable, the Financial Accounting Standards Board.

(ii) *Deficient electronic submission.* A deficient electronic financial submission is a filing that was not made, in some material respect, in accordance with HUD requirements or attested to in accordance with the Standards for Attestation Engagements issued by the American Institute of Certified Public Accountants or Generally Accepted Government Auditing Standards.

(iii) *Deficient audit.* A deficient audit is one that was not performed, in some material respect, in compliance with Generally Accepted Government Auditing Standards; Generally Accepted Auditing Standards; the Single Audit Act and OMB Circular A-133, when applicable; or HUD requirements.

(3) *HUD actions.* If HUD determines that the financial statements, electronic financial submission, or audit

are deficient, HUD may adjust the financial indicator score to zero and/or reduce the overall PHAS score in accordance with the provisions of this section. Additionally, if HUD determines that the audit is deficient, HUD may, at its discretion, elect to serve as the audit committee for the PHA for the next fiscal year and select the audit firm that will perform the audit in question.

§ 902.66 Withholding, denying, and rescinding designation.

(a) *Withholding designation.* In exceptional circumstances, even though a PHA has satisfied all of the PHAS indicators for high performer or standard performer designation, HUD may conduct any review as it may determine necessary, and may deny or rescind incentives or high performer designation or standard performer designation, in the case of a PHA that:

(1) Is operating under a special agreement with HUD (e.g., a civil rights compliance agreement);

(2) Is involved in litigation that bears directly upon the physical, financial, or management performance of a PHA;

(3) Is operating under a court order;

(4) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certifications, submitted in accordance with this part, are not supported by the facts, as evidenced by such sources as a HUD review, routine reports, an Office of Inspector General investigation/audit, an independent auditor's audit, or an investigation by any appropriate legal authority; or

(5) Demonstrates substantial non-compliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under PHAS. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, nondiscrimination and fair housing laws and regulations, or the ACC. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing projects and operate them consistent with federal laws and regulations.

(b) *High performer and standard designations.* If a high performer designation is denied or rescinded, the PHA shall be designated either a standard performer, substandard performer, or troubled performer, depending on the nature and seriousness of the matter or matters constituting the basis for HUD's action. If a standard performer designation is denied or rescinded, the PHA shall be designated as a substandard performer or troubled performer.

(c) *Effect on score.* The denial or rescission of a designation of high performer or standard performer shall not affect the PHA's numerical PHAS score, except where the denial or rescission is under paragraph (a)(4) of this section.

§ 902.68 Technical review of results of PHAS physical condition indicator.

(a) *Request for technical reviews.* This section describes the process for requesting and granting technical reviews of physical inspection results.

(1) For these reviews, the burden of proof is on the PHA to show that an error occurred.

(2) A request for technical review must be submitted in writing to the Real Estate Assessment Center, Attention: TAC—Technical Review, 550 12th Street, SW., Suite 100, Washington, DC 20410 and must be received by HUD no later than 30 days following the issuance of the applicable results to the PHA.

(b) *Technical review of results of physical inspection results.* (1) For each project inspected, the results of the physical inspection and a score for that project will be provided to the PHA. If the PHA believes that an objectively verifiable and material error(s) occurred in the inspection of an individual project, the PHA may request a technical review of the inspection results for that project. Material errors are the only grounds for technical review of physical inspection results.

(2) A PHA's request for a technical review must be accompanied by the PHA's evidence that an objectively verifiable and material error(s) has occurred. The documentation submitted by the PHA may be photographic evidence; written material from an objec-

tive source, such as a local fire marshal or building code official or a licensed or registered architect or professional engineer with the authority to sign and seal or "stamp" documents, thus taking the legal responsibility for them, or other similar evidence that is specific to the inspectable area and item being challenged. The evidence must be more than a disagreement with the inspector's observations, or the inspector's finding regarding the severity of the deficiency.

(3) A technical review of a project's physical inspection will not be conducted based on conditions that were corrected subsequent to the inspection, nor will a request for a technical review be considered if the request is based on a challenge to the inspector's findings as to the severity of the deficiency (*i.e.*, minor, major, or severe).

(4) Upon receipt of a PHA's request for technical review of a project's inspection results, the PHA's file will be reviewed, including any objectively verifiable evidence produced by the PHA. If HUD's review determines that an objectively verifiable and material error(s) has been documented, then one or a combination of the following actions may be taken by HUD:

- (i) Undertake a new inspection;
- (ii) Correct the physical inspection report;
- (iii) Issue a corrected physical condition score; and
- (iv) Issue a corrected PHAS score.

(5) In determining whether a new inspection of the project is warranted and a new PHAS score must be issued, the PHA's file will be reviewed, including any evidence submitted, to determine whether the evidence supports that there may have been a material contractor error in the inspection that results in a significant change from the project's original physical condition score and the PHAS designation assigned to the PHA (*i.e.*, high performer, standard performer, substandard performer, or troubled performer). If HUD determines that a new inspection is warranted, and the new inspection results in a significant change from the original physical condition score, and from the PHA's PHAS score and PHAS designation, the PHA shall be issued a new PHAS score.